

To: Members of the Standards Committee

Notice of a Meeting of the Standards Committee

Thursday, 26 May 2011 at 2.00 pm

County Hall, New Road, Oxford



Peter G. Clark
County Solicitor

May 2011

Contact Officer: **Sue Whitehead**
Tel: (01865) 810262; E-mail: sue.whitehead@oxfordshire.gov.uk

Membership

<i>Councillors:</i>	Mike Badcock Norman Bolster Ann Bonner	Mrs C. Fulljames David Robertson Roz Smith	Val Smith
<i>Voting Independent Members:</i>	Dr N. Alphey Ms A. Griffiths	Professor M. Dean Mr M. Greenwood	

Declarations of Interest

This note briefly summarises the position on interests which you must declare at the meeting. Please refer to the Members' Code of Conduct in Part 9.1 of the Constitution for a fuller description.

The duty to declare ...

You must always declare any "personal interest" in a matter under consideration, ie where the matter affects (either positively or negatively):

- (i) any of the financial and other interests which you are required to notify for inclusion in the statutory Register of Members' Interests; or
- (ii) your own well-being or financial position or that of any member of your family or any person with whom you have a close association more than it would affect other people in the County.

Whose interests are included ...

"Member of your family" in (ii) above includes spouses and partners and other relatives' spouses and partners, and extends to the employment and investment interests of relatives and friends and their involvement in other bodies of various descriptions. For a full list of what "relative" covers, please see the Code of Conduct.

When and what to declare ...

The best time to make any declaration is under the agenda item "Declarations of Interest". Under the Code you must declare not later than at the start of the item concerned or (if different) as soon as the interest "becomes apparent".

In making a declaration you must state the nature of the interest.

Taking part if you have an interest ...

Having made a declaration you may still take part in the debate and vote on the matter unless your personal interest is also a "prejudicial" interest.

"Prejudicial" interests ...

A prejudicial interest is one which a member of the public knowing the relevant facts would think so significant as to be likely to affect your judgment of the public interest.

What to do if your interest is prejudicial ...

If you have a prejudicial interest in any matter under consideration, you may remain in the room but only for the purpose of making representations, answering questions or giving evidence relating to the matter under consideration, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Exceptions ...

There are a few circumstances where you may regard yourself as not having a prejudicial interest or may participate even though you may have one. These, together with other rules about participation in the case of a prejudicial interest, are set out in paragraphs 10 – 12 of the Code.

Seeking Advice ...

It is your responsibility to decide whether any of these provisions apply to you in particular circumstances, but you may wish to seek the advice of the Monitoring Officer before the meeting.

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.

AGENDA

- 1. Election of a Chairman for the 2011/12 Council Year**
- 2. Election of a Deputy Chairman for the 2011/12 Council Year**
- 3. Subordinate Bodies**

The Committee is asked to note that the following existing subordinate bodies fall within the responsibility of this Committee. Appointments to them are not needed at the present time.

Initial Assessment Panel	Two Councillors and 1 independent member of the Committee (drawn from the membership of the Committee)
Review Panel	Two Councillors and 1 independent member of the Committee (drawn from the membership of the Committee)
Hearings Panel	Two Councillor members of the Committee and 1 independent member of the Committee (may comprise more than three members of the Committee, up to and including the whole membership of the Committee)
Dispensations Sub-Committee	Membership to be a minimum of three members of the Committee (including one independent member of the Committee)

- 4. Apologies for Absence**
- 5. Declarations of Interest - see guidance note**
- 6. Minutes (Pages 1 - 6)**

To approve the minutes of the meeting held on 24 June 2010 (**ST6**) and to receive for information any matters arising on them.

7. Petitions and Public Address

8. Annual Report of the Committee 2010/2011 (Pages 7 - 12)

Report by the Chairman of the Standards Committee (**ST8**)

The report summarises the work of the Committee over the last year. Council will consider the report at its meeting on 14 June 2011.

The Committee is RECOMMENDED to consider and endorse the report.

9. Annual Monitoring Officer Report (Pages 13 - 24)

Report by the Monitoring Officer and County Solicitor

The Monitoring Officer reports annually to the Standards Committee on governance and conduct issues. This report summarises progress, developments and the changing context over the past year.

The Committee is RECOMMENDED to consider and endorse the report.

10. Guidance Document: Members on Outside Bodies (Pages 25 - 36)

The Monitoring Officer has produced draft guidance to assist councillors with their roles and responsibilities for Councillors appointed to represent the Council on Outside Bodies.

The Committee is RECOMMENDED to consider and endorse the guidance to members.

11. Update on the Standards Regime (Pages 37 - 40)

This report advises the Committee on the impending changes to the standards regime envisaged in the Localism Bill.

The Committee is RECOMMENDED to consider and comment upon the implications for Oxfordshire County Council of the changes to the standards regime contained in the Localism Bill and as outlined in this report.

STANDARDS COMMITTEE

MINUTES of the meeting held on Thursday, 24 June 2010 commencing at 10.00 am and finishing at 12.04 pm

Present:

Voting Members: Ms A Griffiths – in the Chair

Dr N Alphey
Councillor Mike Badcock
Councillor Norman Bolster
Councillor Ann Bonner
Councillor Roy Darke
Councillor Mrs Catherine Fulljames
Councillor Roz Smith
Professor M Dean
Mr M Greenwood

Officers:

Whole of meeting Mr P Clark (County Solicitor and Monitoring Officer) and
Ms M Holyman (Corporate Core)
Part of meeting Mr G Watson (Corporate Core)

The Committee considered the matters, reports and recommendations contained or referred to in the agenda for the meeting, together with the following additional document (Item 10 – Supplementary Report) and decided as set out below. Except insofar as otherwise specified, the reasons for the decisions are contained in the agenda, reports and additional document, copies of which are attached to the signed Minutes.

40/10 ELECTION OF CHAIRMAN FOR THE 2010/11 COUNCIL YEAR

(Agenda No. 1)

RESOLVED: that Ann Griffiths be elected Chairman of the Committee for the 2010/11 Council Year.

41/10 ELECTION OF DEPUTY CHAIRMAN FOR THE 2010/11 COUNCIL YEAR

(Agenda No. 2)

RESOLVED: that Nina Alphey be elected Deputy Chairman of the Committee for the 2010/11 Council Year.

42/10 MINUTES

(Agenda No. 5)

The Minutes of the meeting of the Committee held on 10 December 2009 were approved and signed.

On Minute 32/09 (Minutes - Indemnity and Insurance for Members), Mr Clark reported that he had issued indemnity for members when sitting on outside bodies.

On Minute 34/09 ('Bringing Standards into Focus' – Annual Assembly of Standards Committees 2009), Dr Alphey reported that the cost of members/officers attending the Annual Assembly had been circulated to members after the last meeting.

On Minute 38/09 (Training Session on Assessments, Reviews, Hearings and Determinations), Ms Griffiths reported that the session had had to be postponed from 14 January 2010 to 4 March 2010, due to bad weather.

43/10 SUBORDINATE BODIES

(Agenda No. 7)

The Committee was advised that four subordinate bodies fell within the responsibility of the Committee.

RESOLVED: to note that the following existing subordinate bodies fell within the responsibility of this Committee but appointments to them were not needed at the present time.

Initial Assessment Panel	Two Councillors and one independent member of the Committee (drawn from the membership of the Committee)
Review Panel	Two Councillors and one independent member of the Committee (drawn from the membership of the Committee)
Hearings Panel	Two Councillor members of the Committee and one independent member of the Committee (may comprise more than three members of the Committee, up to and including the whole membership of the Committee)
Dispensations Sub-Committee	Membership to be a minimum of three members of the Committee (including one independent member of the Committee)

44/10 MONITORING OFFICER'S ANNUAL REPORT

(Agenda No. 8)

The Committee considered a report (ST8) which summarised progress and developments on governance and conduct issues over the past year. It also included a review of how the Committee had fulfilled its responsibilities with examples of good practice and compliance.

Mr Clark drew attention to the following additions/corrections to the report:

- On paragraph 29, Dr Alphey had attended the induction day for new members as a representative of the Standards Committee.
- On paragraph 36, the Review Panel had found a breach on one issue but had agreed that it did not warrant further action.

On the section on Politically Restricted Posts, Mr Watson agreed to send the policy and set of frequently asked questions to all members of the Committee.

RESOLVED: to endorse the report as amended and the work programme for 2010/11, subject to deleting item 13 as the annual Standards for England Assembly, due to have taken place this autumn, had been cancelled.

45/10 ANNUAL REPORT OF THE COMMITTEE 2009/10

(Agenda No. 9)

The Committee considered a report (ST9) which summarised the work of the Committee over the last year.

Ms Griffiths reported that the member who had been the subject of complaints, as mentioned in the report, had been named at the Council meeting. The name of the member and the papers were confidential and a breach of security had occurred. Mr Clark had spoken to the councillor who had disclosed the information at the meeting and the councillor had apologised. He had also written to the members of the Committee who had served on the Initial Assessment and Review Panels advising them that the papers were confidential and that disclosing any of the information was not appropriate.

In response to an enquiry about whether it was known who had leaked the information, Councillor Darke reported that he had disclosed the name but no details of the cases.

With regard to pages about the Standards Committee on the Council's website, Mr Watson reported that there had been 100 visits to the site which had gone live at the end of March/early April. The Standards Committee's webpages had been promoted on the front page of the internet site at the launch together with relevant links and it might be possible to book this again if the Committee wished.

RESOLVED: to note the report, to ask that the front page of the internet site be booked for promoting the Committee's web pages and role when elections were next due to be held and to thank Mr Watson for his work in developing the site.

46/10 CRIMINAL RECORDS AND VETTING AND BARRING SCHEME CHECKS FOR COUNCILLORS AND CO-OPTED MEMBERS

(Agenda No. 10)

The Committee had before it reports (ST10 and ST10 – Supplement) which considered the implications for councillors and co-opted members of the requirements of the Criminal Records Bureau and Vetting and Barring Scheme. The Committee was advised that the coalition Government had announced its intention to review the Vetting and Barring Scheme.

RESOLVED: to agree to defer consideration of the report and supplementary report and to ask the Head of Legal & Democratic Services to submit a report on the Vetting and Barring Scheme once the coalition Government's intentions were known and to update the work programme accordingly.

47/10 LOCAL FORUM OF INDEPENDENT MEMBERS OF STANDARDS COMMITTEES

(Agenda No. 11)

The Committee was advised that it had been agreed to set up an Oxfordshire Forum of chairmen and deputy chairmen of Oxfordshire's standards committees for the sharing of common issues and good practice and its first meeting was due to be held on 9 July 2010.

Ms Griffiths suggested that the first meeting of the Oxfordshire Forum be postponed pending decisions by the Government on its proposals for the local government standards regime.

RESOLVED: to postpone the meeting of the Oxfordshire Forum of chairmen and deputy chairmen of Oxfordshire's standards committees pending decisions by the Government on its proposals for the local government standards regime.

48/10 ATTENDANCE AT AND REVIEW OF MEETINGS

(Agenda No. 12)

The Committee considered whether they wished to attend meetings of the Authority to observe conduct at meetings.

RESOLVED: to note that members of the Committee would decide on an individual basis whether they wished to attend meetings of the Authority.

49/10 STANDARDS FOR ENGLAND - ANNUAL ASSEMBLY - 18 AND 19 OCTOBER 2010

(Agenda No. 13)

The Committee was advised that the Standards for England had cancelled its Annual Assembly for 2010.

RESOLVED: to note the position.

50/10 CASE REVIEW 2010

(Agenda No. 14)

The Monitoring Officer presented a case example from Standards for England which the Committee considered.

RESOLVED: to note the case example considered.

..... in the Chair

Date of signing

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ANNUAL REPORT OF THE STANDARDS COMMITTEE 2010/11



Introduction

This is my second annual report to Council since my election as Chairman of the Standards Committee. This report updates Council on the Committee's activities and the changing context of them.

Standards Committee's Responsibilities

The Standards Committee was set up in November 2001 as part of the ethical framework introduced by the Local Government Act 2000. Its areas of responsibility include:

- To advise the Council on the adoption of and any revisions to the Code of Conduct for Oxfordshire County Council, to monitor its operation, and to assist councillors and co-opted members to observe its provisions;
- To promote high standards of conduct by councillors and co-opted members;
- To deal with reports from the Monitoring Officer or an Ethical Standards Officer of Standards for England on their investigations into allegations of breaches of the Code of Conduct.

The Standards Committee is also responsible for the local consideration of allegations of breaches of the Code of Conduct and has set up the following three Sub-Committees to carry out this responsibility:

- Initial Assessment Panel – to carry out the initial assessment of misconduct allegations;
- Review Panel – to review a decision of the Initial Assessment Panel to take no action in respect of an allegation;
- Standards Hearing Panel – to determine any matters referred to it

under the provisions of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended.

In addition, the Committee has set up a Dispensations Sub-Committee to consider applications from members for dispensation on speaking and voting at meetings when they have a prejudicial interest.

Changing context

Following the general election in May 2010, the Coalition Government indicated its intention to make a fundamental change to the standards regime. This included a commitment to abolish Standards for England together with the requirement for councils to have a code of conduct or a standards committee. Rather, the Government proposed that there would be a criminal offence of failing to register or disclose an interest.

Standards for England cancelled its planned annual meeting of standards committee and made other retrenchments to its activities. It is set to cease investigation of complaints late in 2011 and be abolished in 2012.

The Standards Committee for the Council has therefore had to react to this changing environment and to accept the Government's direction of travel. This has meant that the Committee's meeting scheduled for December 2010 was postponed to allow the specifics of the Localism Bill to become more apparent.

Consequently, given this changing context, it was appropriate that the Committee's work programme should not be renewed during the year but that attention should be paid instead to the arrangements already put in place

by the Committee previously and to the Monitoring Officer's ongoing activities in the areas of members interests, conduct and member development.

Nevertheless, the Committee is clear that the current standards regime remains in place until the new legislation takes effect. It therefore views its responsibilities as ongoing within that context.

Membership

The Committee re-elected me as Chairman and Nina Alphey as Deputy Chairman of the Committee at its June meeting. In view of the economic climate, Nina and I agreed it was right for us to waive the special responsibility allowances attaching to our roles. This is also consistent with the Council's commitment to reducing costs while maintaining focus. This took effect from December 2010.

Professor Meryll Dean and Mr Mark Greenwood have continued to serve as independent members of the Committee.

Given the changes outlined above, it was decided to postpone the December meeting of the Committee until the potential changes to the standards regime were more clearly known as a result of the publication of the Localism Bill.

Complaints and the 'local filter'

The Standards Committee receives and makes initial assessments of new misconduct allegations relating to this authority, considers requests to review decisions to take no action and conducts hearings to determine complaints which have been investigated. This is known as the 'local filter'. Standards for England

continues to investigate only the very serious cases, very complex cases and cases which, if investigated locally, would lead to severe disruption of business.

The Initial Assessment Panel has met once since my last report and decided that no other action be taken as regards the complaint against the member concerned. Given the issues involved, the Monitoring Officer did however issue advice to all councillors about good standards practice when blogging or tweeting.

Work Programme

The Committee's work programme was confirmed in June 2010 as the Government's intentions for the standards regime were being revealed. Insofar as this focused on the role and profile of the Committee itself, it has not been appropriate to make much of this given the Government's intention to discontinue the role of standards committee's in their current form.

However, it is important that the Committee ensures that appropriate transitional arrangements are put in place to maintain compliance and up to and beyond the changes taking place. This will be a priority in the coming months.

Other areas of importance for the Committee have been acted upon. An annual reminder to members to review their registers of interest took place in July 2010.

The Monitoring Officer also reported to the Committee on a survey of officer views on their perceptions of being able to challenge members without fear of reprisal. Encouragingly, respondents to the survey spoke very

positively about the Council's culture, with clear recognition of the scope of member and officer roles and the procedures for raising any concerns. The lack of any such concerns was itself positive.

An intended action regarding compliance with new requirements for criminal records checking was superseded when, early into its term of office, the Government announced the suspension of the intended changes. As a Committee, we are continuing to monitor this situation so as to promote the appropriate action.

My Deputy Chairman and I have welcomed the opportunity to meet with the Monitoring Officer periodically during the year to discuss the emerging issues and future of the Committee and, more importantly, ongoing activities in achieving high standards of conduct.

Conclusion

The changing context of the standards regime nationally has obviously, and necessarily, had consequences for local standards committees. Nevertheless, standards of conduct have remained high and the Committee is committed to overseeing, for the remainder of its term of office, the promotion of awareness and understanding of high standards.

The emphasis in the past year has been on continuing the ongoing activities of the council and in understanding, and anticipating, the changes and challenges ahead under the new regime.

This work is set to continue and the Committee will play an appropriate and

proportionate role on behalf of the Council in encouraging high standards and monitoring the shift to new arrangements.

Ann Griffiths

Independent Chairman of the
Standards Committee
May 2011

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Division(s): N/A

STANDARDS COMMITTEE – 26 MAY 2011

ANNUAL MONITORING OFFICER REPORT

Report by the Monitoring Officer and County Solicitor

Introduction

1. The Monitoring Officer reports annually to the Standards Committee on governance and conduct issues. This report summarises progress, developments and the changing context over the past year.

The Committee and its responsibilities – a review

2. Since my last report the most significant change to affect the area of governance and conduct has been the new Coalition Government's agenda for the standards regime and the impact of its spending review. From the outset, the Coalition Government declared its intention to abolish the current standards regime – including the requirement for a code of conduct and for the appointment of a standards committee. The agenda also included a statement to abolish Standards for England.
3. The changes to the standards regime were to feature in the Localism Bill which was duly introduced to Parliament in December 2010. Prior to that, Standards for England had decided not to issue new initiatives but maintained that it would be 'business as usual' in respect of complaints referred to it. It also cancelled its annual conference of standards committees scheduled for October 2010.
4. In short, the published Localism Bill sought to abolish the Standards Board regime and the model code of conduct, and to introduce local accountability and a criminal offence of deliberate failure to declare an interest. The Bill does however allow a local right to retain a code of conduct, and a standards committee. However, under any such arrangements, the Council would not have any legal sanctions available to it other than censure.
5. In addition, in May 2010, the Government announced that the Comprehensive Area Assessment would be abolished and the Audit Commission subsequently instructed its auditors to cease all 'use of resources assessment' work. This has the effect of freeing councils from much of the governance requirements on which it had previously been assessed.
6. These changes, together with the implications of the Government's spending review, have meant that the landscape of ethical governance has changed over the past year and will continue to do so.

7. This has meant a revision to the Standards Committee's areas of focus. Consequently, the meeting of the committee scheduled for December 2010 was cancelled to allow the emerging implications of the Localism Bill to become apparent.
8. The committee has nevertheless remained in place, with Ms Ann Griffiths and Dr Nina Alphey continuing as chairman and deputy chairman respectively.
9. The committee's responsibilities are set out in the Constitution and as yet remain unchanged until the Localism Bill is enacted. Each of the headings below represent an area of the committee's responsibility and I have summarised some developments – either in progress or context – under each.

To Promote and Maintain High Standards of Conduct by Councillors and Co-opted Members

10. Promoting and maintaining high standards depends in part on the existence of robust policies and procedures together with activity to make sure these are working in practice. Given that members work integrally within the council's decision-making structure, it is also important that the council's decision-making reflects transparency and accountability. The following is a summary of activity which demonstrates how high standards have been promoted and maintained:

The Monitoring Officer

11. The Monitoring Officer's Group has been formally included within the Council's Corporate Governance Working Group. The Monitoring Officer's Group is an officer group that reviews corporate governance issues including scrutiny of the Forward Plan of Cabinet decisions, the consideration of lawful decision making and standards issues generally. Given the Council's Business Strategy emphasis on slimming down the number of meetings, the opportunity was taken to merge the Monitoring Officer Group with the existing council-wide Corporate Governance Working Group. This has ensured the continuation of the Monitoring Officer Group's focus while reducing the number of meetings and ensuring wider awareness of, and input to, the issues concerned.
12. Monitoring Officers from the county and district councils have also continued to meet together to discuss issues of common concern, including the sharing of perspectives about the emerging Localism Bill and ethical governance arrangements.
13. The Monitoring Officer has also continued to maintain and raise the profile of the register of members' interests. All members completed their registers following the 2009 elections and reminders and articles have reinforced awareness of the need to keep these up to date.

Democratic process

14. In September 2009 the Council began using modern.gov, a software package which is mainly used for creating, tracking and publishing council meeting agendas, reports and minutes, but which also contains modules for elections, Forward Plan and e-petitions (a new statutory duty on local authorities from 15 December 2010). Councillors' web pages are updated using information from the system, including responsibilities (such as Chairman or Cabinet Member), committee appointments, as well as appointments to outside bodies. The system is also able to publish on the website parish council contact names and details.
15. In December 2010, the Council's e-petitions system module went live and has already received 16 petitions many of which have received signatures in the several hundreds. This has coincided with the Council's spending review and has also therefore allowed members of the public to channel petitions as part of their engagement with the consultation processes.
16. The Council has also produced DVDs of several short films for members of the public specifically to raise awareness about the role of councillors, how to address meetings, and the importance of making complaints and freedom of information requests, as well as explaining how to vote or become a councillor. Following a successful external funding bid, the DVDs have been produced at no cost to the Council. They are subtitled in six community languages and are currently being circulated to community groups and all secondary schools and colleges.

Closed sessions

17. The Audit Commission has recommended scrutiny of the council's use of closed sessions in which members of the public are excluded from meetings. The public can be excluded from the whole or part of a meeting if the meeting is to discuss confidential or exempt information (as set out in Schedule 12A of the Local Government Act 1972, as amended). The Monitoring Officer, in his role of ensuring lawful decision making, has reviewed the number of times this has happened over the past year via quarterly reports to the Monitoring Officer's Group. The results are set out in the **Annex 1** to this report. There has been a slight decrease in closed sessions (21 in 2010/11 compared to 23 last year) and the Monitoring Officer is satisfied that the reasons were appropriate in each case.

Cabinet – Forward Plan

18. Items for decision by the Cabinet over any forthcoming four-month period are included in a Forward Plan. Occasionally, decisions are needed on items that have not been included on a Forward Plan. These are dealt with by General Exception notices to the Forward Plan. The Monitoring Officer has reviewed

the number of times that this has occurred and is satisfied with the reasons in each case. **Annex 2** to this report gives a list of the 9 instances.

Scrutiny Call-In

19. The Council's Scrutiny Procedure Rules (Rule 17a) allow for executive decisions to be exempted from call-in if they are deemed urgent and any delay would prejudice the council's interests. There were 5 such instances in 2010/11 and the Monitoring Officer's Group has reviewed these. **Annex 3** gives a list of instances.

Chief Executive Decisions

20. Under the Council's Constitution, the Chief Executive has delegated powers to undertake any function of the Cabinet after appropriate consultation. Any exercise of this function is reported to the Cabinet. During the year 2010-11 this delegation was exercised on 7 occasions, 6 fewer than in 2009/10. Of these, 5 were for exemptions to the requirements of the Contract Procedure Rules and required (and received) a legal (County Solicitor) and financial (Chief Finance Officer) appraisal.

To Assist Councillors and Co-Opted Members to Observe the Members' Code of Conduct

21. Following the county council elections a full programme of induction took place and part of this involved a thorough awareness-raising of the Code of Conduct and its observation. Since that time, emphasis has been on reinforcing specific issues such as understanding of the planning code of practice and a review of registers of interest.
22. In April 2010 a session was held with members of the Planning & Regulation Committee and potential substitutes on the planning code of practice. In July 2010, the Monitoring Officer issued a reminder to all members of the council to review their registers of interest. These registers have been maintained and updates have taken place since then, when individual members' interests have changed. The full range of registers continues to appear on the Council's website.
23. Potential changes to the Criminal Records Bureau regime were halted by the incoming Coalition Government who announced the intention to introduce a more proportionate scheme. No changes were made to the Council's existing arrangements. All members of the Council were subject to a check following election.
24. The following activities have also taken place in the past year:
- (a) publication on the council's website each month of the allowances paid to each councillor and co-opted member

- (b) Monitoring Officer review/decision on individual member appeals on allowances claim issues, under the council's adopted procedure
- (c) Monitoring Officer advice to individual members/co-opted members on their own specific interests and whether or not these require registration
- (d) Further updates to the Constitution in November 2010 and circulation of updates to all members of the Council.

To Advise the Council on the Adoption or Revision of the Member's Code of Conduct

25. The Government's expected revision to the model code of conduct was contained in the Localism Bill. No actual changes have therefore taken place in the past year. Preparation has been made however toward the formation of a training programme based on the Localism Bill which will equip councillors with awareness of the changes and their own responsibilities under any new regime.

To Monitor the Operation of the Members' Code

(a) Register of Interests

26. Members receive reminders as to what should be registered as part of a six-monthly review of register entries. Discrepancies between Members' registered interests and their interests as declared in meetings are being monitored and followed up with individual members. Councillors and co-opted members are reminded of the need to register Gifts and Hospitality received that are of the value of £25 or over, in conjunction with the review of the register of interests. Members are referred to the Policy for Members, agreed by this Committee in 2005, and are given a summary of the main points of the Policy.
27. The form for the notification of changes to the Register of Interests, including Gifts and Hospitality is available in the Members' accommodation area and on the Members' section of the intranet. The Monitoring Officer has personally scrutinised the Register and can confirm that for the municipal year 2010/11 there are no significant concerns with regard to the declarations that have been made.

(b) Declarations of Interest

28. There have been 158 declarations of interest recorded at meetings over the last year. This compares with 95 declarations in 2009/10. However, 60 of the declarations for 2010/1 related directly to a single meeting at which Full Council considered a major review of the Council's allowances scheme. In other respects, therefore, the number of declarations is consistent with the previous year.
29. The usual safeguards are in place, including a reminder to members of the need to declare interests at all meetings, and all agenda contain a standard

item headed "Declarations of Interest". The item refers to detailed guidance attached to the agenda setting out how and when to declare an interest.

(c) Number and Outcome of Applications for Dispensations

30. There have been no applications for dispensation.

(d) The Number and Nature of Complaints of Breaches of the Code

31. There has been one formal complaint against a member. This was properly considered by an Initial Assessment panel but no breach of the code was found.

(e) Informal resolution

32. Issues of concern raised by Members and the public can be discussed and dealt with on an informal basis subject to the complainant's right to demand the matter is formally considered by the Standards Committee. The Monitoring Officer and Deputy Monitoring Officers, therefore, can and do play an active part in trying to mediate and deal with issues when they arise without necessarily engaging the formal process.

To Advise, Train or Arrange Training for Councillors and Co-Opted Members on Matters Relating to the Members' Code of Conduct

33. Standards for England cancelled their annual conference, scheduled for October 2010 following announcement by the Coalition Government of the intended abolition of the standards regime.
34. The council has continued its requirement that all members of the Planning & Regulation Committee and any substitutes should have training in the Planning Code of Practice before serving in a decision –making capacity. All members serving or substituting on the committee throughout the year have attended this training prior to attending the committee. An event took place in April 2010.

Members' Allowances

35. A comprehensive review of members' allowances was undertaken by the Independent Remuneration Panel between September and December 2010. This produced recommendations to full Council in January 2011 which were accepted.
36. Members' claims continue to be the subject of scrutiny for audit purposes and a process exists whereby 10% of each month's claims are checked in detail in addition to the calculation checks that take place each month. A process of appeal also exists to Democratic Services and then to the Monitoring Officer if a member disagrees with a decision to exclude a payment.

Political Assistants

37. In January 2011, the Council agreed to the cessation (from April 2011) of posts which provide support directly to the three largest political groups on the council. This process was managed by the Monitoring Officer and Group Leaders and group members were aware of the reasons and practical implications. The Council's non-political democratic support staff continue to provide advice and support to all councillors and therefore the cessation of the posts of political assistant is not expected to have any impact on standards issues.

Bribery Act

38. The government announced that the Bribery Act will come into force on 1 July 2011. The Act is important to businesses because it not only prohibits giving and accepting bribes, but also creates a new offence under which companies have criminal liability for bribery undertaken by their employees, agents or other representatives. The only defence is to show that they had put in place adequate procedures to prevent bribery.

The council already has in place governance policies and procedures for both councillors and officer covering the issue of giving or receiving bribes, and the Monitoring Officer will continue to review and report should any incidents on this matter arise.

Summary

39. This annual review highlights the progress that has been made in implementing the code of conduct for members and in promoting and maintaining high standards of conduct and public accountability.

RECOMMENDATION

40. **The Committee is RECOMMENDED to consider and endorse the report.**

P G CLARK
Monitoring Officer & County Solicitor

Background Papers: Nil

Contact Officer: Glenn Watson, Principal Governance Officer Tel: (01865) 815270

May 2011

Closed sessions - Exempt reports

Committee/Cabinet Member	Date	Provision (see note)
Delegated Decision of the Cabinet Member for Safer & Stronger Communities	10 May 2010	3 Annex
Pension Benefits Sub-Committee	13 May 2010	1,2,3
Delegated Decision of the Cabinet Member for Adult Services	1 June 2010	3
Appointment Sub-Committee (Chief Fire Officer)	8 June 2010	2,3
Pension Fund Committee	25 June 2010	3
Cabinet	27 July 2010	3 Annexes
Pension Fund Committee	3 September 2010	3
Pension Benefits Sub-Committee	28 October 2010	1,2,3
Appeals Sub-Committee	15 July 2010	1,2,3
Appeals Sub-Committee	14 October 2010	1,2,3
Pension Fund Committee	3 December 2010	3
Appeals Sub-Committee	9 December 2010	1,2,3
Pension Benefits Sub-Committee	11 November 2010	1,2,3
Delegated Decision of the Cabinet Member for Adult Services	16 November 2010	3 Annex
Pension Benefits Sub-Committee	22 December 2010	1,2,3
Delegated Decision of the Cabinet Member for Children, Young people & Families	4 January 2011	3 Annex
Pension Benefits Sub-Committee	6 January 2011	1,2,3
Pension Fund Committee	18 March 2011	3
Pension Benefits Sub-Committee	17 March 2011	1,2,3
Appeals Sub-Committee	24 March 2011	1,2,3
Pension Benefits Sub-Committee	31 March 2011	1,2,3

Provisions

1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or officer

General Exceptions to the Forward Plan

Cabinet 18 May 2010

S106 Contribution - Request for Write Off

The decision to approve write off a S106 contribution needed to be taken at Cabinet on 18 May 2010 because of the urgent need to address a local community concern, the financial risk to the Council if further house sales fall through and to meet a Council commitment that the matter would be dealt with by the end of May.

Service & Resource Planning 2011/12 to 2015/16 and the Council's Business Strategy

The process for 2011/12 could not follow the normal practice of reporting in September 2010, with significant changes being made for both Revenue and Capital in-year in 2010/11 so a report was required to Cabinet on 20 July 2011

Revised Carers Commissioning Intentions within Oxfordshire

The decision on this matter needed to be taken at the meeting of Cabinet on 20 July 2010 so that the award of contract could take place no later than December 2010 and services put in place by April 2011. To delay the decision would have resulted in a delay in service provision which could seriously have prejudiced the Council's and the public's interest.

Early Years Free Entitlement – Revised Provider Agreement

The decision to approve the new agreement and the circumstances and process for removing providers from the early years register needed to be taken at the delegated decision session of the Cabinet Member for Children, Young People & Families on 10 August 2010 to enable the new early years Provider Agreement, which is a binding agreement with over 320 private and voluntary providers of the free entitlement of early education for 3 and 4 year olds, to be published by 1st September 2010. To delay the decision could have resulted in a risk to the service provision which could have seriously prejudiced the Council's and the public's interest.

ICT Overspend 2009/10

The Audit Committee at its meeting on 17 November 2010 required the report of the Audit Working Group to be referred to Cabinet together with an update by the Acting Head of ICT of how the matters raised in the report have been addressed. It was necessary that the matter be considered at the meeting of Cabinet on 21 December 2010 so that the findings and response could be taken into account as part of the budget process.

Proposed Change to Support for Members

The decision on a proposal for changes to the support provided to members needed to be taken at the full Cabinet meeting on 21 December 2010 in order to achieve budgetary savings and delay would reduce the efficiency savings that could be achieved.

Exemption from Contract Procedure Rules

The decision to exempt a number of contracts held with voluntary sector organisations that come to an end on 31 March 2011 so that services can continue to be supplied for up to twelve months needed to be taken at the delegated decision session of the Cabinet Member for Adult Services on 23 March 2011 as delay would endanger the continuation of services which would be prejudicial to the interests of the Council and to those members of the public who rely on the services provided.

Approval for Capital Grant for The Shotover View Extra Care Housing Development

The decision to agree the allocation of £1.16million from the County's Capital Programme needed to be taken at the full Cabinet meeting on 15 March 2011 in order to secure the grant subsidy from the Homes and Communities Agency. Failure to take the decision would have resulted in the loss of funding which would have been detrimental to the Council's financial interest and to the strategy for the development of services for older people.

Authority to Extend Changes to Terms and Conditions to Employment Groups Where Agreement Has Not Been Possible

The decision to take appropriate steps to extend changes to terms and conditions of employment to those groups of employees, so far as this is possible, where agreement had not proved to be possible needed to be taken at the full Cabinet meeting on 15 March 2011 in order to achieve budgetary savings and delay would reduce the efficiency savings that could be achieved

Exemptions from call-in

Meeting	Date	Decision	Reason for Urgency
Cabinet	25 January 2011	Concessionary Fares Scheme	Since the County Council's duty to provide a concessionary fares scheme will come into effect on 1 April 2011, and existing District Council contracts to meet that duty will end on that date, the effect of any call-in would be to prevent introduction of any replacement contracts, thus resulting in cessation of any concessionary fares scheme in Oxfordshire and a consequent service discontinuity
Cabinet	15 March 2011	Culham Parochial Primary School)	Any delay would seriously prejudice the Council's interests, due to additional financial costs, and the interests of the public in that the publication of any necessary statutory notice would be delayed leading to significant disadvantage to parents with children at the School.
Cabinet	15 March 2011	Urgent Business - Approval for Capital Grant for The Shotover View Extra Care Housing Development	Any delay would be detrimental to the Council's financial interest and to the strategy for the development of services for older people.
Delegated Decision by Cabinet member for Transport	31 March 2011	Bus Services Subsidies	Since existing subsidy contracts will inevitably end on 5 June 2010, the effect of any call-in would be to prevent introduction of any replacement contracts, thus resulting in complete withdrawal of the services concerned and a consequent service discontinuity.
Delegated Decision	9 September	Bus Services Subsidies	The decisions in relation to subsidised bus services in the

by Cabinet member for Transport	2010		Witney and Eynsham area were urgent in that any delay likely to be caused by the call in process would result in service discontinuity
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GUIDANCE FOR COUNCILLORS – APPOINTED TO REPRESENT THE COUNCIL ON OUTSIDE BODIES



INTRODUCTION

This guidance is produced to assist councillors with their roles and responsibilities when they sit on outside bodies. In addition there is guidance relating to the code of conduct on personal and prejudicial interests contained within this guidance.

The fundamental principles of this guidance are as follows:

- Councillors will act according to the rules, constitutions and frameworks set by the relevant outside body and where, possible, with those of the Council.
- Councillors will make independent and personal judgements based on their duty of care to the outside body
- Councillors will report back, on their involvement with the outside body, at least annually to the Council
- Councillors will comply with their obligations as far as they are applicable pursuant to the code of conduct
- Councillors will take an active and informed role in the management of the outside body's affairs unless they are placed as an observer
- Membership of an outside body does not include representing a political party.

GENERAL PROVISIONS

There are some general provisions which apply to councillors who act in the role of company director, charity trustee or member of an unincorporated body.

Councillors are under a duty to exercise independent judgment in the interests of the organisation in which they are involved. Whilst it is recognised that councillors may have a commitment to representing the Council on the Outside Body, they must be aware that it is their responsibility to decide on what view to take on any question before that organisation. For example, an instruction from the Council to vote one way or the other would put the councillor in breach of his/her duty to the organisation. It is permissible to take account of the Council's wishes, but not to vote simply in accordance with them without applying one's own judgment.

Where a councillor is involved in an outside organisation as a representative of the Council, he/she must declare that fact to the organisation.

Councillors must also ensure that avoidable loss is not incurred in managing the organisation concerned. They cannot avoid this responsibility by not reading the papers or failing to ask for the appropriate report. They will be expected to seek professional advice as appropriate.

Councillors who represent the Council in such circumstances need to familiarise themselves with the duties they will assume and any potential liabilities they may face. It is essential that they are aware of how to deal with any conflicts of interest that may arise and they need to be sure that the proper procedures have been followed in respect of appointments to the relevant organisation.

COMPANIES

Companies can be:

- Limited by shares, usually operating a trade or business. They have shareholders and distribute profits to shareholders as dividends.
- Limited by guarantee – or so called “not for profit” organisations, which have members rather than shareholders. This type of company may also be a charity.

Companies are separate legal entities which employ staff, enter into contracts and own land/property. The day to day business of a company is managed by its board of directors.

Companies offer limited liability. This means that the members or shareholders are usually not personally liable for the company’s debts and liabilities, subject to limited exceptions.

The powers of the directors are usually set out in the company’s Articles of Association. These are the rules that govern the internal management of the company.

DUTIES OF A COMPANY DIRECTOR

- **To act in good faith and in the best interests of the company when making decisions as a director.**

This means exercising your own, independent judgment on matters and whilst factors such as the views and wishes of the Council or your political group, may be taken into account, one should avoid slavishly following the council or party group line without considering all other relevant considerations. When making decisions about the company the law also requires you to consider the interests of employees as well as the interests of members/shareholders. In certain cases you may find that the best interests of the company and the Council conflict. Guidance on conflicts of interest is included in this guidance.

- **To exercise reasonable care and skill when making decisions as a director.**

A director requires no greater skill than might reasonably be expected of someone of that individual’s particular knowledge and experience. Directors are not deemed to be experts but

they are expected to use due diligence and to obtain expert advice if necessary. This is very similar to the Councillor/Officer relationship in terms of decision making and the provision and consideration of professional advice.

- **A fiduciary duty to act honestly and in good faith and in the best interests of the company as a whole. (The term 'fiduciary' refers to the interests of other persons rather than one's own personal interests).**
- **To act in accordance with the company's memorandum and articles of association, plus any other rules, regulations or bylaws that the company may operate pursuant to. Councillors/Officers should ensure that they have an up to date copy of these documents and are aware of their contents.**
- **To inform the board of a company if you have any direct or indirect interest in a contract the company is considering, proposing or entering.**

For example, this will include contracts between the company and the Council. These requirements are similar to those contained in the Code of Conduct governing the declaration of personal/prejudicial interests. In other words councillors must notify the other directors before the company makes a decision on the matter concerned and the councillor should not take part in any board discussions about the contract.

- **Not to make a profit from their positions within the company.**

You must therefore declare any interests you have (or those of your family/close associates) in relation to the company's contracts. Permission to vote on a particular matter would depend on the articles of association.

- **To comply with company law.**

Directors must ensure that the Companies Acts are complied with particularly in respect of the maintenance of accounts and the submission of statutory returns to the register of companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director.

LIABILITIES OF A DIRECTOR

What are the potential liabilities when acting as a director?

Generally, in the absence of misconduct, directors have no personal liability for the debts they build up on the company's behalf. However, directors can be held responsible for certain types of activities they are involved in on behalf of the company, which could lead to a personal liability to other people or criminal liability. Some of the more serious wrongdoings that can arise are set out below:-

Wrongful trading

- This is where a director knows or is expected to know that the company is likely to go into liquidation and he or she fails to take action to reduce the amount the company owes to their creditors.
- In other words, the directors continue trading where there appears to be no possibility of the company being able to settle its debts with its creditors within a reasonable period of time of them becoming due. It is not an option for the director to do nothing; the director must take action to protect creditors as soon as he or she becomes aware, or should have been aware, of the risk of insolvency.
- When judging whether a director should have been aware of the risk, the court will expect every director to have at least the general knowledge, skill and experience which could be expected of someone in their position.
- If a director is found to have been wrongfully trading, a court can order him or her to personally contribute to the assets of the company when it goes into liquidation.

Fraudulent trading

- This arises where there is a deliberate attempt to defraud creditors and the company then fails. There needs to be evidence that the director intended to defraud; mere omissions to act are not sufficient.
- This will involve the fraudulent trader deceiving his or her creditors into believing they will be paid on an agreed date. As well as having to personally contribute to the assets of the company when it is liquidated, fraudulent trading is also a criminal offence and may lead to fines and imprisonment.

Breach of a warrant of authority

- This is where a director gives someone else the impression that he or she has authority to act on behalf of the company when in fact he or she hasn't.
- An example here would be entering into a contract for supplying goods or services.
- In these circumstances, because the director held him/herself out to have authority to sign a contract and commit the company (when s/he didn't have such authority), the other person involved can claim from the director personally any loss he or she has suffered as a result of the lack of such authority.

Personal guarantees

- If directors have personally guaranteed a loan to the company and the company cannot meet the conditions of the loan, the lender may choose to enforce the guarantee against the personal assets of the directors who have given the guarantee.
- In extreme cases, directors may have to sell their homes to repay the company's debt or be declared bankrupt.

Acting as a director whilst disqualified

- Any director who is guilty of acting as a company director whilst disqualified from acting as a company director will be liable for the company's debts that built up during that period.

Failing to maintain company records

- All directors and officers of the company must maintain up-to-date records, both at Companies House and as part of the book-keeping arrangements for the company. If they do not do this, they will have to pay a fine.

The environment and health and safety issues

- By law, civil or criminal proceedings may be taken against a director for the actions of the company in relation to environmental or health and safety matters. For example, acts of pollution.

PROTECTION AGAINST PERSONAL LIABILITY

Can nominee directors protect themselves against personal liability?

- Generally speaking, insurance cover can be put in place to protect directors in the proper and lawful conduct of their duties. However, it may not always be the most effective protection considering that the risks which are commonly regarded as the most serious (for example criminal liability and wrongful trading) are often excluded from insurance cover.
- The **Companies Act** gives companies the right to put in place liability insurance cover for their directors and officers, and the companies may pay the premiums. Companies need to make sure that the cover is suitable because this type of policy excludes dishonesty, fraud, slander, libel, pollution, and claims or actions resulting from a director trying to benefit personally.
- For professional directors (accountants, solicitors, architects and structural engineers) providing specialist knowledge and expertise to the board and the company, professional indemnity insurance may be available at a cost.

Can a local authority protect councillors and officers nominated as directors?

The **Local Government Act 2000** allows the Secretary of State to make regulations giving local authorities powers to provide some protection for a councillor or officer acting as the Council's nominated director where a claim is brought against them because of some negligent act, or failure to act, in the course of carrying out their duties as Directors. . These regulations are set out in the **2004 Indemnities Order** which came into effect in November 2004.

The measures that a local authority can take are either:

- providing a specific indemnity to the officer or councillor; or
- securing the provision of an insurance policy; or
- both the above

Cover can only be provided by the authority where the officer or councillor has been specifically appointed by the authority to act as the Council's nominated director.

Cover cannot extend to acts by the councillor or officer regarded as criminal e.g. wrongful or fraudulent trading. It can be used to meet the costs of defending any criminal proceedings but if convicted; the costs of the defence must be reimbursed to the Council or Insurance Company.

Cover cannot be provided where there is intentional wrongdoing, fraud or recklessness. Neither can it be provided to fund an action for defamation brought by a councillor or officer against a third party (although it can extend to defending an action for defamation brought against a councillor or officer by a third party).

The cover also extends to councillors or officers doing acts which are outside the powers of the authority (i.e. ultra vires) so long as they reasonably believed what they were doing at the time was within the powers of the authority.

The Local Authorities (Companies) Order 1995

This Order sets out the rules concerning Councils' involvement in "regulated companies" which are subject to extensive controls.

Regulated companies are so defined if they are "controlled" or "influenced" by the Council. Influenced companies, under the effective control of the local authority, will be subject to capital finance regimes and special property controls.

Companies are local authority "influenced" if there is at least a 20% Council interest plus a business relationship with the company accounting for over 50% of the company's turnover and/or the company is located on local authority land, leased or sold for less than the best price reasonably obtainable. Companies are local authority "controlled" if there is a local authority interest in excess of 50% and the minority interest is less than 20%.

In particular Regulated Companies are subject to the following requirements:

- Comply with limits placed on remuneration paid to Directors who are also councillors of an authority which is a shareholder;
- Ensure that Councillor Directors who become disqualified from membership of an authority are removed from the Board;

CONFLICTS OF INTEREST

Conflicts of interest may arise between the Council and a company. Even if the Council and the company have the same overall aims and objectives you cannot assume that their interests will always be the same. The legal position and your obligations remain the same even if the company has worthy objectives or is formed in response to a Council or government initiative.

Conflicts of interest may arise if:

- the council is selling, donating or leasing land to the company.
- the company and the council are negotiating a contract with each other.
- the company is seeking funding from the council.
- there is a dispute between the company and the council.
- the company is tendering or negotiating to provide goods, services or works to the council.

Company law requires you to act in the best interests of the company but the Council will have nominated you as a director to represent or promote the Council's interests. Accordingly, if you are uncertain whether a conflict of interest exists you should seek advice from the Monitoring Officer as soon as possible.

If you think you have a conflict of interest you should:

- Notify the Monitoring Officer;
- Notify the company's board of directors,
- Take no further part in the matter on behalf of the company.

CHARITIES

Charities may be created by registering any of the following with the Charity Commission.

- A Trust Deed – the Trustees become charity trustees
- A company limited by guarantee – the directors become charity trustees.
- An unincorporated association – the Management Committee become charity trustees

In order to qualify for a charitable status, the Commission must be satisfied that the organisation is operating for a charitable purpose. These are:

- The relief of poverty and human suffering
- The advancement of education
- The advancement of religion
- Another purpose for the benefit of the community

An organisation which operates for political purposes cannot qualify for charitable status.

The Duties of a Charity Trustee

Charity Trustees must:

- Act strictly in accordance with the charity's constitution and rules.
- Act in the best interests of the charity.
- Manage the charity's affairs prudently
- Not derive any personal benefit or gain from the charity.
- Take proper professional advice on matters you are not competent to decide yourself.
- Ensure that the charity's bank accounts are operated by more than one person.
- Ensure the trustees have proper control of the charity's property and assets.
- Ensure that the charity keeps full and accurate accounting records.
- Spend charity income solely for the purposes set out in the charity's constitution.
- Ensure charity property is properly maintained and insured.

Personal Liability

Personal liability may be incurred if a trustee:

- Acts outside the scope of the trust deed
- Falls below the required standard of care
- Makes a personal profit from the trust assets

Personal liability to a third party may arise because a charitable trust, unlike a company, is not a separate legal entity.

UNINCORPORATED ASSOCIATIONS/BODIES

Organisations which are neither charities nor companies are referred to as unincorporated associations. They usually operate pursuant to a constitution or set of rules defining the organisation's responsibilities and those of its members.

The affairs of an unincorporated association are usually governed by a management committee in accordance with the constitution of that organisation or agreed rules of procedure.

Unincorporated associations cannot do any of the following in their own name:

- Enter into contracts
- Own land
- Employ staff

Members of the organisation's management committee must act in accordance with its constitution and must take reasonable care in exercising the organisation's powers.

Generally, the members of the management committee are liable for the acts of the organisation but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the committee members are personally liable for the shortfall.

Members of a management committee will have personal liability if they act outside the authority given to them or if they do not comply with the relevant legal obligations.

Unincorporated associations – Duties

As a matter of good practice councillors appointed to represent the Council on an unincorporated association (body or organisation) must:

- Act in the best interests of the association
- Use reasonable care and skill when involved in decision making on behalf of the association
- Act in accordance with the association's rules or constitution.

Councillors/officers are therefore encouraged to:

- Clarify the extent of any limits to their power to act on behalf of the Council
- Notify the Monitoring Officer if the association is proposing to take a course of action which is disadvantageous to the Council or which seems to involve considerable risk
- Ensure the association has clear rules and procedures for decision making, particularly for entering into contracts.

THE MEMBERS CODE OF CONDUCT

Duty to Observe the Code

Councillors are obliged to observe the provisions of the Code whenever they conduct the business of the authority including when they act as a representative of the authority except and insofar as it conflicts with any other lawful obligations to which that body is subject. So the position is that a councillor would not be in breach of the Code in circumstances where they take action which would normally constitute a breach but they are legally obliged to act in that way as a result of their position within the outside body.

It is not easy to imagine such circumstances but one example might be where an authority was proposing to take action which would have an extremely adverse effect on the financial

wellbeing of a company on which a councillor sat as a Director. If the councillor was privy to the information concerning the authority's plans s/he may find themselves in a position where s/he was compelled to disclose this potentially confidential information to the company due to his/her fiduciary duty to the company itself and duties arising under the companies act to avoid trading when insolvent. This is an extreme example but one which could feasibly arise.

Personal and Prejudicial interests

Personal Interests these are covered in paragraph 8 of the Code and are set out below:-

A councillor will have a personal interest in any business of the authority where either it relates to or is likely to affect:

- a) any body of which the councillor is a member or in a position of general control or management and to which the councillor has been appointed or nominated by the Authority;
- b) any body which exercises functions of a public nature, is directed to charitable purposes or if its principal purpose includes influencing public policy or opinion. (including any political party or trade union) and the member is in a position of general control or management.
- c) Any employment or business carried on by the councillor
- d) Any person or body who employs or has appointed the member
- e) Any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by the councillor in carrying out the councillor's duties.
- f) Any person or body who has a place of business or land in the authority's area, and in whom the councillor has a beneficial interest in a class of securities of that person or body that exceeds a nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower).
- g) Any contract for goods, services or works made between the authority and the member of firm of which the councillor is a partner, a company of which the councillor is remunerated director, or a person or body of the of the description of paragraph (f) above.
- h) The interests of any person from whom the councillor has received a gift or hospitality with an estimated value of £25;
- i) Any land in the councillor's authority's area in which the councillor has a beneficial interest
- j) Any land where the landlord is the councillor's authority and the councillor is a firm in which the councillor is a partner, or remunerated director or a person/body of the description set out in paragraph (f) above is the tenant;
- k) Any land in the authority's area for which the councillor has a licence (alone or jointly with others) to occupy for 28 days or longer or;
- l) a decision in relation to that business might reasonably be regarded as affecting the councillor's well being or financial position or the well being or financial position of a relevant person to a greater extent than the majority of:
 - other council tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.

A 'relevant person' is a member of the councillor's family, or any person with whom the councillor has a close association; or any person/body who employs or appoints such person, any firm in which they are a partner or company in which they are directors or any person/body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000 or any body of a type described in (a) or (b) above.

Prejudicial interests

If a councillor has a personal interest then the member should also consider whether they could also have a prejudicial interest as set out in paragraph 10 of the code of conduct.

A personal interest will also be a prejudicial interest in a matter if all of the following conditions are met:

- a) the matter does not fall within one of the exempt categories of decisions;
- b) the matter affects your financial interests or the financial position of any person or body through whom you have a personal interest or relates to a licensing or regulatory matter.
- c) A member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgment of the public interest.

The exempt categories are:

- Housing: if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease;
- School meals or school transport and travelling expenses; if you are a parent or guardian of a child in full-time education or you are a parent governor, unless it relates particularly to the school your child attends.
- Statutory sick pay
- An allowance, payment or indemnity for councillors
- Any ceremonial honour given to councillors
- Setting council tax or precept.

If a councillor has a prejudicial interest the councillor will only be able to speak at a meeting where the matter is being discussed if members of the public are able to speak and will then need to leave the meeting for the duration of the debate and vote.

However if the councillor only has a personal interest then he/she will be able to stay in the meeting, speak and vote.

REPORTING ARRANGEMENTS

Councillors who represent the Council on outside bodies are required to submit a written report to full council annually on the activities of the organisation and should also provide regular reports (the agenda, any points of relevance to the Council and anything of interest to councillors in general) after each meeting of the organisation for councillor information.

The purpose of the reporting arrangements is to ensure that councillors are kept fully informed of the activities of the outside body or organisation concerned; the nature of the organisation's activities, and the impact of such activities on the local community and Council's service delivery.

It should be noted that councillors may also be asked to attend an overview and scrutiny committee should it be felt by any councillor that the activities of the organisation should be scrutinised or reviewed.

Reports will be submitted in writing by the elected councillor and, so far as is reasonably practicable, limited to one side of A4.

FURTHER ADVICE

Advice on the application of this guidance should be sought from the Monitoring Officer, Peter Clark 01865 323907 or email: peter.clark@oxfordshire.gov.uk

Division(s): N/A

STANDARDS COMMITTEE – 26 MAY 2011

UPDATE ON STANDARDS REGIME

Report by Head of Law and Governance

1. This report advises the Committee on the impending changes to the standards regime envisaged in the Localism Bill.

Introduction

2. The current standards regime, which regulates the standard of conduct of local authority members, will be significantly changed through the Localism Bill. The new arrangements will generally allow local authorities to make their own decisions as to how to regulate the conduct of their members. However, new criminal offences will be introduced, relating to failure of local authority members to register or disclose interests and their participation in local authority business contrary to prohibitions or restrictions.

Main implications

Standards for England

3. The Coalition Government has stated its intention to abolish Standards for England, the non-departmental public body responsible for promoting and monitoring standards of conduct in local government. The Bill duly makes provision for this. Consequently, statutory provisions which required local authorities to submit reports to Standards for England and enabled them to refer some allegations of breach of their codes of conduct to Standards for England are to be repealed.

Codes of Conduct

4. The Bill also includes a duty for councils to ensure that members and co-opted members maintain a high standard of conduct. However, in contrast to current arrangements under the Local Government Act 2000 which require local authorities to have adopted a code of conduct based on a national model code, the Bill provides that relevant authorities may adopt codes of conduct but it does not oblige them to do so.
5. The Bill therefore allows for the council's existing code of conduct, made under the Local Government Act 2000, to cease to have effect, and for any undertakings to comply with them to cease to have effect when the relevant codes cease to have effect. An authority will therefore be able to;

- revise its code of conduct
 - adopt a replacement code or
 - simply withdraw its code without replacing it.
6. Additionally, such voluntary codes would only apply to members and co-opted members when they are acting in that capacity.
7. A relevant authority may publicise its adoption, revision or withdrawal of a code of conduct in any manner it considers appropriate.

Alleged breaches of codes of conduct

8. The existing statutory provisions contained in the Local Government Act 2000 and the Standards Committee (England) Regulations 2008, which specify how local authorities in England must deal with allegations of breach of their code of conduct are to be repealed. Instead, if a relevant authority receives an allegation that a member has acted in breach of the code, it must consider whether it is appropriate to investigate it and, if it decides that an investigation is appropriate, it must investigate in the manner it thinks fit.
9. If an authority finds that a member or co-opted member has failed to comply with its code of conduct, the Bill says that it may have regard to the failure in deciding what if any action to take. For example, a local authority might decide that it is necessary to censure a member or to restrict his or her access to the local authority's officers, premises and facilities.
10. An advice note from Eversheds, the local government lawyers, mentions the case of *R v Broadland District Council, ex parte Lashley* [2001]. This has shown that a local authority would be able to use sections 111 and 101 of the Local Government Act 1972 to take such actions if it took a reasonable decision that this was calculated to facilitate, or was conducive or incidental to its arrangement for the discharge of any of its functions. However, in practice it may be very difficult for any local authority to enforce any requirements or restrictions it decides to impose on a member if the member chooses to ignore them.

Members' interests

11. Currently, the Monitoring Officer must maintain a register of members' interests under the Local Government Act 2000 (Section 81) but amendments in the Localism Bill would mean that this requirement would apply only to Welsh authorities under the new arrangements. The Localism Bill does however give the Secretary of State the power to introduce regulations requiring monitoring officers to establish and maintain registers of interests.
12. This expresses the Government's intention to retain some control over the potential for local authority members to misuse their position to further their own interests or for there to be a perception that this is so. The regulations may:

- specify interests to be registered;
 - require members to disclose interests;
 - prevent or restrict members' participation in business if they have an interest;
 - allow authorities to provide for dispensations from such restrictions;
 - provide for authorities to impose sanctions on members and co-opted members for failure to comply (these sanctions may not include suspension or disqualification), and
 - require the register to be publicly available.
13. The Localism Bill makes provision for criminal offences if a member or co-opted member acts in breach of regulations relating to members' interests by:
- failing to register interests;
 - failing to disclose them before participating in business of their authority relating to the interest, or taking part in business of their authority contrary to any prohibition or restriction imposed by the relevant regulations.
14. A prosecution may only be instituted by or on behalf of the Director of Public Prosecutions. Proceedings may be brought within twelve months of the prosecutor having sufficient evidence to warrant the proceedings but no later than three years after the offence or, if there is a continuous contravention, after the last date on which the offence was committed. A person who is convicted of such an offence is liable to a fine not exceeding level 5 on the standard scale. A court may also make an order to disqualify such a person from being or becoming a member or co-opted member for a period of up to five years.

Standards Committees

15. The requirement for local authorities in England to establish standards committees will be abolished through provisions in the Localism Bill.
16. The functions of standards committees in England to consider applications for posts to be exempt from political restriction will become the responsibility of the head of paid service, as a result of amendments which the Localism Bill will make to section 3A of the Local Government and Housing Act 1989.

Predetermination

17. The Localism Bill introduces provision to clarify that a decision maker is not to be regarded as having approached a decision with a closed mind if they have given a previous indication of their view on a matter. This applies when there is an issue of allegation of bias or predetermination which affects the validity of a decision. This is intended to ensure that councillors do not feel unable or uncertain about what they may do in terms of championing local issues.

Conclusion

18. The challenge for the Council in meeting the requirements of the Localism Bill will be to find a way to ensure that they comply with their duty to promote and maintain a high standard of conduct. A mechanism will need to be determined for dealing with the implications of the new criminal offences relating to members' interests.
19. The introduction of such offences is intended to help deter members from misusing their position and to take action against any councillors who do so. It will be important then, as now, that arrangements are in place to explain the provisions to members, and also to prospective members, of the Council.

RECOMMENDATION

20. **The Committee is RECOMMENDED to consider and comment upon the implications for Oxfordshire County Council of the changes to the standards regime contained in the Localism Bill and as outlined in this report.**

NAME Peter Clark
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Background papers:

Advice note from Eversheds, 19 January 2011 on the implications of the Localism Bill

Localism Bill

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